



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 2150
Falls Church, Virginia 22041

April 2, 2019

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Matthew Hoppock
MuckRock News
DEPT MR 66792
411A Highland Ave.
Somerville, MA 02144-2516

Re: FOIA 2019-18730

Dear Mr. Hoppock:

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) dated December 31, 2018 in which you seek the following:

1. Records for each immigration judge reflecting the current number of case completions since 10/1/2018
2. BIA remand rate corresponding to each immigration judge case completions since 10/1/2018

With respect to paragraph 1, upon review of our records, it has been determined that you submitted a separate FOIA request, FOIA 2019-21451, for the same records. As you will recall, we responded to FOIA 2019-21451 by letter dated March 20, 2019. Therefore, paragraph 1 of the above-referenced FOIA request is being closed as a duplicate request.

With respect to paragraph 2, we are closing this request as an improper FOIA request. Agency records are records that are either created or obtained by an agency and under agency control at the time of the FOIA request. *See DOJ v. Tax Analysts*, 492 U.S. 136 (1989). A corollary to the definition of an “agency record” as explained in *DOJ v. Tax Analyst* is that the FOIA statute does not require an agency to create a record in response to a FOIA request. Calculating remand rates necessarily would require EOIR to create one or more records in response to your request and the FOIA statute does not require us to undertake that endeavor.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact our FOIA Public Liaison at the telephone number (703) 605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Joseph Schaaf

J.R. Schaaf
Chief Counsel for Administrative Law